



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON, D.C. 20370-5100

ELP
Docket No. 5196-99
30 November 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 29 November 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Naval Reserve on 19 October 1973 for six years at age 21. The record reflects that you were advanced to SA (E-2) and ordered to involuntary active duty for a period of 19 months on 21 March 1975. You served for only five months without incident. During the five month period from August 1975 to January 1976 you received three nonjudicial punishments (NJP) and were convicted by civil authorities. Your military offenses consisted of failure to go to your appointed place of duty, disrespect towards an officer, insubordination, failure to obey a lawful order, and two brief periods of unauthorized absence (UA) totalling about 25 hours. Your civil conviction was for threatening a police officer and breach of the peace. During this period, you were also diagnosed with a passive-aggressive personality disorder and discharge was recommended.

On 18 February 1976 you were notified that you were being considered for administrative separation by reason of unsuitability due to a diagnosed character and behavior disorder. You were advised of your procedural rights and declined to submit a statement in your own behalf. Thereafter, the discharge authority directed a general discharge by reason of unsuitability. You were so discharged on 20 February 1976.

Regulations provide that individuals discharged by reason of a character and behavior disorder will receive the type of discharge warranted by the service record. Character of service is based, in part, on military behavior and overall trait averages which are computed from marks assigned during period evaluations. Your military behavior and overall trait averages were 2.0 and 2.2, respectively. The minimum average marks required for a fully honorable characterization at the time of your discharge were 3.0 in military behavior and 2.7 in overall traits.

Medical records were requested from the Department of Veterans Affairs (DVA) in St. Petersburg, FL and Biloxi, MS. Only the DVA in St. Petersburg provided any medical records. They showed that on 17 December 1982 you were awarded 10 percent non-service connected disability rating for a passive-aggressive personality disorder. Your case was reopened on 14 February 2000 and the DVA granted you a combined non-service connected disability rating of 40 percent for right tibia/fibula fracture (20%), left distal femur fracture (10%), and left foot fracture (10%). You were denied service connection for recurrent right and left ankle sprain, post traumatic stress disorder, and adjustment disorder with depression.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your limited education, diagnosed personality disorder, and the fact that it has been more than 24 years since you were discharged. The Board noted your request to have "character and behavior disorder" removed from your DD Form 214 and your contentions that you have been diagnosed with clinical depression and a bipolar disorder, and your belief that you suffered from depression while in the Navy. However, the most recent DVA rating decision available to the Board indicates that your contention has no merit since no disability rating was ever granted for depression. Further available records contain no evidence of a bipolar disorder diagnosis. In order for such a diagnosis to have any relevance with regard to your discharge, it would have to be made shortly after your discharge and would require persuasive evidence that the disorder was serious enough to mitigate your misconduct. It is incumbent upon you to provide the necessary medical evidence to support your case. The reasons and authority for discharge

have been established by law and must be shown on the DD Form 214. At the time of your discharge, you were provided a DD Form 214 without this information.

Accordingly, the Board concluded that the foregoing factors and contentions were insufficient to warrant recharacterization given your record of three NJPs, a civil conviction, and your failure to achieve the required averages in military behavior and overall traits. The Board concluded that you were guilty of too much misconduct in only 11 months of service to warrant a fully honorable characterization of service. The Board thus concluded that the discharge was proper and no change is warranted. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director